IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 162 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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KANCHANLAL CHHOTALAL GANDHI - Appellant(s)
Versus
BABUBHAI S. PANDYA & ANR. - Respondent(s)

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Appearance :
Shri Harin P. Raval for Appellant(s).
None for Respondent(s) : 1.
Shri L.R. Pujari, Additional Public Prosecutor for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/04/2007

ORAL JUDGMENT

Present is an appeal under Section 378 of the Code of Criminal Procedure, 1973 (“the Code” for short) by a private complainant, whose complaint, after due trial, has been dismissed.

2. The appellant was the Chairman of Balasinor Nagrik Cooperative Bank Limited and the present respondent was a Director of the Board of Directors of the said Bank. Even otherwise, the respondent-accused was also holding the Office of the Chairman of Balasinor Municipality. It appears that due to some altercation between the Manager of the Bank and the present respondent-accused, a news item was published, which conveyed a sense that because of the dispute between the parties, there was every likelihood of the Bank being taken into liquidation. Thereafter, the accused-respondent, in his capacity as the Chairman of the Municipality, withdrew the amount of Rs.1 lakh from the account maintained with the Bank and as alleged by the complainant, some others also closed their accounts with the Bank. Being aggrieved by the said news item/publication, the complainant in his capacity as the Chairman of the Bank filed a private complaint seeking conviction of the respondent under Section 500 of the Indian Penal Code, 1860, alleging, *inter alia,* that because of the publication and the acts of the respondent, the Bank had adversely suffered in its working and was unnecessarily defamed.

3. The learned trial Court, after recording the evidence and hearing the parties, ultimately, found that the appellant failed to bring the guilt home. It held that neither there was any defamatory statement in the publication nor the action of the accused caused any defamation or loss of reputation to the complainant/Bank. The Court also observed that the complainant failed to prove that the news item was published at the instance or at the behest of the accused. It, accordingly, acquitted the accused. Being aggrieved by the said acquittal, the complainant is before this Court.

4. Shri Harin P. Raval, learned Counsel for the complainant, after taking me through the records and the alleged libel, submitted that present is a case where the respondent-accused is required to be convicted for causing defamation.

5. From the records, it does not appear that after publication of the alleged news item, the Bank suffered any loss to its reputation. The amount of Rs.1 lakh could certainly be withdrawn by the respondent in his capacity as the Chairman and as a customer of the Bank. If a customer withdraws the amount from the Bank, the Bank cannot say that the large or big withdrawal would adversely affect the reputation of the Bank. So far as the publication of the news item is concerned, in fact, there is no evidence to prove or show that the accused was the main tool behind the entire game and at his behest, the news was published. In case of libel, one is required to prove that somebody was the author and he himself or through some agency, got the news or the libel published. Unless the connection between the publication and the writing is shown, one cannot be held to be the author of the libel or consequential publication.

6. So far as other withdrawals by number of customers are concerned, but, for an oral statement that number of persons had closed their accounts, nothing else has been produced on the record. In case of a banker, who maintains the account, and the entries made in the register are admissible under the Bankers Books of Evidence Act, the Bank was required to produce at least extracts from the register to prove that the other accounts were closed. If that was not so done, one cannot hold that the accused had committed any wrong or is liable to be punished for the alleged offences.

7. After giving my thoughtful consideration, I am of the opinion that the learned Court below was absolutely justified in acquitting the accused. The appeal deserves to and is, accordingly, dismissed. The bail bonds, if any, are discharged.

[R.S.Garg, J.]

*kamlesh**